

**THE EFFECTIVE DATE OF THIS ORDINANCE IS JANUARY 8, 2008**

**ORDINANCE NO. 08-03-479**

**Re: Adequate Public Facilities Ordinance Road Testing – Deleting an Exemption and Removing the Ability to Prorate Approved Background Development Traffic**

**BACKGROUND**

In preparing Traffic Impact Studies (TIS), §1-20-31(B)(3) of the Adequate Public Facilities Ordinance (APFO) provides that the traffic from all previously approved developments shall be considered in determining whether a subject intersection passes the road adequacy test. The calculation of trips from these projects is called *approved background development*.

Generally, projects performing TIS have considered 100% of the trips expected to be generated by all approved background developments upon the build out of the subject project. A recent applicant for site plan approval before the Frederick County Planning Commission (FCPC) submitted a TIS using only a portion of approved background development traffic, relying on §1-20-31(B)(3) of the APFO, which provides, in pertinent part, that: "*Approved background development traffic impacts will be pro-rated to coincide with the length of time for which APFO approval is requested for the proposed project in proportion to the approved background projects.*" The FCPC approved the application, but requested Staff to suggest changes to §1-20-31(B)(3) of the APFO to the BOCC.

On October 22, 2007, the BOCC considered this ordinance, which amends §1-20-31(B)(3) to remove the ability of an applicant to prorate approved development background traffic for road adequacy testing purposes. The ordinance also reflects corresponding changes to §1-20-12, which currently refers to §1-20-30. The BOCC voted 4-1 (Jenkins opposed) to add changes to delete §1-20-30 of the APFO, which provides an exemption from APFO testing for projects expected to generate less than 50 peak-hour trips, and to send the proposed ordinance to public hearing.

On November 14, 2007 and December 19, 2007, the FCPC held public hearings and voted to recommend approval of this Ordinance.

On January 8, 2008, the BOCC held a public hearing on this Ordinance, during which the public had a chance to comment.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND that the following additions and amendments shall be made to §§1-20-12, 1-20-30, and 1-20-31 of the Frederick County Adequate Public Facilities Ordinance:

**§ 1-20-12. ESCROW FUNDS FOR ROAD IMPROVEMENTS.**

(A) In lieu of either providing the public facility improvements or waiting for public facilities to become adequate as provided in § 1-20-11, the developer shall have the option of contributing money to an escrow account as set forth in this section, provided the Planning Commission determines that the developer has fulfilled each of the requirements of this section.

(B) The amount of money the developer shall be required to place in the escrow account shall be the proportionate share of costs of making the improvements required to satisfy the roads adequacy requirements in §~~§ 1-20-30 and~~ 1-20-31. This proportionate share shall be based on an equitable allocation or portion of traffic trips that the proposed development is estimated to cause, when measured against the additional usable capacity that the proposed improvement is creating. The amount of such escrow shall be roughly proportionate to the anticipated traffic impact of the proposed development. In arriving at the equitable allocation or portion, the Planning Commission shall consider the traffic impact of the development as it relates to the entire road improvement being proposed. The applicant shall provide adequate information to make this equitable allocation. Planning Department and Department of Public Works staffs shall review this information provided by the applicant and recommend an equitable allocation. The Planning Commission shall determine the equitable allocation. The proposed road improvement may upon the request of the applicant be designed to create more new capacity than only that which is required for the development to satisfy the adequacy requirements in §~~§ 1-20-30 and~~ 1-20-31, if the Planning Commission determines that the road link or intersection to be improved will require greater improvement to handle additional future development consistent with the County Comprehensive Plan. Once a road improvement is approved for a particular road link or intersection and an escrow account is established, subsequent applicants shall either contribute to the escrow fund an equitable allocation of the approved road improvement or build the approved road improvement.

**[Subsections (C) – (H) – Unchanged]**

### § 1-20-30. THRESHOLDS. (REPEALED)

~~{ (A) Except where an APFO escrow account (§ 1-20-12(D)) has already been established, this article does not apply to developments which generate or are expected to generate less than 50 total vehicle trips during the highest daily peak hour of the adjacent street traffic, as defined by the most recent edition of the Institute of Transportation Engineers, (ITE) "Trip Generation Manual," for the use category determined by the Zoning Administrator. Said trips are driveway volumes in and out and may be a combination of "new" trips and "intercept" trips.~~

~~—(B) In determining whether or not a total of 50 peak hour vehicle trips will be generated during the peak hour of the adjacent street traffic, all land at 1 location within the county under common ownership or control by a developer shall be included. The phrase "at one location" means all adjacent land of the developer, the property lines of which are contiguous or nearly contiguous at any point. A developer shall not avoid the intent of this section by submitting piecemeal applications for preliminary plats or site plans. A developer may seek approval of only a portion of a subdivision or development which generates less trips than the criteria, provided that upon seeking approval of the remaining subdivision or development which generates trips greater than the criteria, including that approved previously under this subsection, the development will comply with the requirements of this section.~~

~~—(C) For those residential applications falling above the overall APFO de minimis threshold of 5 or fewer lots, yet having fewer than the "roads" thresholds of 50 total vehicle trips during the highest daily peak hour of the adjacent street, county staff will maintain a cumulative data base of these developments for the purpose of monitoring these respective impacts on roads and bridges.~~

### § 1-20-31. DETERMINATION OF ADEQUACY.

(A) For all development applications~~[meeting the threshold criteria outlined in § 1-20-30]~~, a traffic impact study (TIS) shall be prepared by the developer and submitted to the Department of Planning and Zoning which will review it along with the Department of Public Works. The portion of existing road(s) required to be adequate shall be determined by the Department of Planning and Zoning in consultation with the Department of Public Works based on a pre-study conference or documented correspondence between the county and the developer. The Department of Public Works shall use as its guidelines the following 2 paragraphs, but may, in consultation with the developer, adopt a reasonable study area based on sound traffic engineering knowledge of the site and the situation. Any disputes regarding study area or scope shall be resolved by the Planning Commission.

(B) The TIS shall be prepared for the design hours, which are defined as the peak hours which will be most affected by the proposed development; i.e., any combination of a.m., mid-day, p.m., evening, weekend, or school hours as determined via the pre-study agreement. The TIS will include, but not be limited to:

(1) A written description of the site boundaries and characteristics which the study has been based upon, including development size, land usage, proposed parking, etc., a graphical depiction of the site location, and, where helpful, a graphical summarization of any unique site-plan characteristics;

(2) Existing conditions, including existing traffic volumes recorded when school is in session (unless in the opinion of the Department of Public Works significant circumstances preclude this), existing lane usage, existing levels of service (LOS), and a thorough study area descriptive narrative of the physical roadway conditions, including all controls, constraints, and deficiencies;

(3) Vehicle trip generation and design hour volumes generated by the proposed development and traffic expected to be generated by approved development in the study areas as determined by the Zoning Administrator. **THE LATEST EDITION OF THE ITE "TRIP GENERATION MANUAL" IS TO BE USED UNLESS SPECIFICALLY APPLICABLE RATES (COUNTY COMPARABLES, INDIVIDUAL GENERATOR STUDIES, ETC.) ARE IDENTIFIED AND ACCEPTED BY THE DEPARTMENT OF PUBLIC WORKS.** For minor commercial/industrial subdivision projects the applicant shall have the option to:

(a) Specify particular uses for traffic analysis; or  
(b) Use the highest traffic generating use; ~~or~~  
~~— (c) Limit the property usage to a traffic level below the APFO threshold and such restrictions shall be noted on the plat. The latest edition of the ITE "Trip Generation Manual" is to be used unless specifically applicable rates (county comparables, individual generator studies, etc.) are identified and accepted by the Department of Public Works. Approved background development traffic impacts will be pro-rated to coincide with the length of time for which APFO approval is requested for the proposed project in proportion to the approved background projects];~~

(4) Trip distribution and traffic assignment based upon sound planning judgment of the future conditions;

(5) Growth in through-traffic as determined from historical data or other planning factors affecting future traffic volumes. Growth rates will be applied only to the "through" trips at the intersection;

(6) LOS capacity analysis of all required intersections and links (where necessary) for existing conditions and all intermediate and ultimate future conditions with and without the proposed development;

(7) In cases where traffic safety is identified as an issue at the pre-study conference, reported traffic accidents for the last 5 years;

(8) Roadway and bridge improvements programmed or currently funded for construction in the most recent capital budget or second year of CIP. However, if roadway and bridge improvements are in the most recent capital budget or the second year of the CIP and are developer-funded, those improvements may not be included in the TIS for any other development until the improvements are completed, subject to subsection (G) of this section. If a developer has provided funds for a portion of developer-funded improvements in the most recent capital budget or the second year of the CIP, that portion of the developer-funded improvements may not be included in the TIS for any other proposed development until the improvements are completed, subject to subsection (G);

(9) Improvements funded in the current or second budget year of the Maryland Department of Transportation (MDOT) Consolidated Transportation Program; and

(10) . Any other information that may reasonably be required by the Department of Planning and Zoning or the Department of Public Works to effectively evaluate the road network or application.

(C) – (G) [Unchanged]

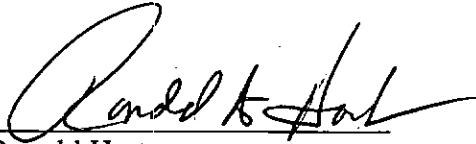
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall apply to applications for subdivision, resubdivision, site plan, or Phase II approval filed on or after the effective date of this Ordinance. Unless it would impair vested rights, this Ordinance shall also apply retroactively to any application for subdivision, resubdivision, site plan, or Phase II approval filed prior to, but not having final approval before, the effective date of this Ordinance.

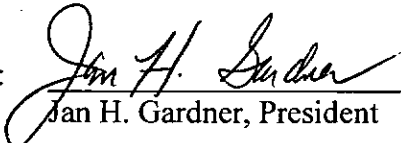
AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on January 8, 2008.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 8<sup>th</sup> day of January, 2008.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
FREDERICK COUNTY, MARYLAND

  
Ronald Hart  
County Manager

BY:  (SEAL)  
Jan H. Gardner, President

Kem  
1/10/08